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LEOW FOOK KEONG v. PENDAFTAR BESAR BAGI KELAHIRAN DAN KEMATIAN MALAYSIA, JABATAN PENDAFTARAN NEGARA, MALAYSIA & ANOR

FEDERAL COURT, PUTRAJAYA
TENGKU MAIMUN TUAN MAT CJ
B MOHD ZAWAWI SALLEH FCJ
MARY LIM FCJ
[CIVIL APPEAL NO: 01(f)-1-01-2019(W)]
18 NOVEMBER 2021

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Abstract – *The National Registration Department is under a statutory duty to record the particulars of the natural father of an illegitimate child and to correct and update such records, when evidence and undisputed facts are available. When a child is fully aware of who his biological father is, the information ought to be reflected in the public record, that is the register. The true status of the child ought to be corrected to reflect accurate information as regards the biological father, as required by the scheme of the Births and Deaths Registration Act 1957.*

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FAMILY LAW: *Children – Illegitimate child – Registration of birth of illegitimate child – Particulars of biological father recorded as 'information unavailable' – Biological father successfully procured order of court declaring him as biological father – Whether register containing incomplete particulars on biological father ought to be updated to reflect declaratory order by court and following undisputed DNA results – Whether declaratory order valid and effective – Whether National*

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Registration Department under statutory duty to record particulars of biological father of illegitimate child and to correct such records when evidence and undisputed facts are available – Whether status of child ought to be corrected to reflect accurate information on biological father – Whether in best interest of child – Births and Deaths Registration Act 1957, ss. 7, 13, 13A, 27, 28, 34 & 39

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STATUTORY INTERPRETATION: *Births and Deaths Registration Act 1957 – Sections 27 & 28 – Intent of – Whether Registrar-General to take proactive steps towards ensuring all births registered and only best and accurate information entered – Whether object and scheme of Act to compel Registrar-General to carry out statutory duties of correction and updating of records – Whether National*

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Registration Department under statutory duty to record particulars of biological father of illegitimate child – Whether status of child ought to be corrected to reflect accurate information on biological father – Whether in best interest of child – Births and Deaths Registration Act 1957, ss. 7, 13, 13A, 34 & 39

I

The appellant had successfully procured an order of court *vide* an originating summons ('OS') declaring him as the biological father of a child born on 16 July 2015 at Sunway Medical Centre ('child'). That declaratory order was granted after the High Court in the OS had earlier ordered that a deoxyribonucleic acid test or more commonly known as a 'DNA test' be

conducted on the second respondent and the child. The relevant persons, namely the appellant, the second respondent and the child, provided the necessary blood samples for that test. The report prepared by the Chemistry Department which carried out the DNA test revealed that the appellant was the biological father of the child. According to the appellant, the child is from a relationship he had with the second respondent. The second respondent, who was the mother of the child, had registered the birth of the child without his knowledge leading to the particulars of the father of the child being recorded as 'maklumat tidak diperolehi' or information unavailable. The appellant claimed that had he known of the registration, he would have attended the same and have his details so recorded. The appellant filed the present proceedings, citing the Registrar-General of Births and Deaths at the National Registration Department, Malaysia as the first respondent and the mother of the child as the second respondent. In essence, the appellant claimed that the second respondent had failed to provide the relevant information pertaining to the father of the child at the material time of registration of the birth of the child despite being in possession of such information. As regards the first respondent, the appellant's case was simply this – that the register which contained incomplete particulars on the father of the child should be updated to reflect the declaratory order granted by the High Court in the OS, that he was the biological or natural father of the child. The High Court, in granting the orders in the appellant's application, held *inter alia* that (i) the first respondent had a statutory duty to receive information pertaining to a child's birth; and (ii) under s. 28 of the Births and Deaths Registration Act 1957 ('Act'), the first respondent was duty-bound to maintain details or particulars in the register which are true and correct. The Court of Appeal, however, disagreed with the High Court, and held that (i) s. 28 does not supersede s. 13 of the Act; and (ii) that the decision of the High Court was 'in conflict with public policy', 'culture of the people' and 'religious values'. Hence, this appeal. The single question before the court was whether the National Registration Department is under a statutory duty to record the particulars of the natural father of an illegitimate child and/or to correct/amend/update such records, when evidence and undisputed facts are available.

Held (allowing appeal)
Per Mary Lim FCJ delivering the judgment of the court:

(1) Every birth and death must be timeously registered or informed to the relevant Registrar by the persons identified under the Act; such persons described as 'qualified informants' (s. 7(3)). The presence of these provisions serves only to emphasise the importance of registration of every birth (and death). This is further underscored by the fact that Registrars are mandatorily obliged to accept every registration (s. 7). It is an offence under s. 34, for Registrars to refuse registration save and except where there is reasonable cause for refusal or omission to register. (paras 39-41)

(2) The details that are entered into the register are 'such particulars concerning the birth as may be prescribed'. For this purpose and pursuant to the rules-making powers under s. 39 of the Act, the Births and Deaths Registration Rules 2019, apply. The particulars in the registers must be true and correct; whether on the part of the qualified informant or the registrar entering the particulars provided. For the relevant information entered into the registers to be true and correct, it must also be accurate, particularly at the material time the information is given. If any errors or omissions are subsequently 'discovered' in any register, these may be corrected by the Registrar-General. (paras 42-45)

(3) Section 28 imposes a positive duty on the Superintendent-Registrar and the Registrar (they assist the Registrar-General in the functions and duties under the Act) to 'procure by all means in their power the best and most accurate information respecting any birth, stillbirth or death which may have occurred within their registration areas and to cause particulars of the same to be recorded (so far as is practicable) in the manner prescribed'. Clearly, the intent behind s. 28 is to require the Registrar-General and his officers to take proactive steps towards ensuring that all births (and deaths) are registered, and that only the 'best and most accurate information' are entered into the registers. The Registrar-General even has the power to update the re-registration of legitimated persons whose parents have overlooked the re-registration of their births after the marriage of the parents concerned by requiring the parents to attend personally and give such information as are necessary for the re-registration. (paras 46 & 47)

(4) All these duties coupled with the power to correct and alter any entry in the registers, whilst maintaining the original entries, serve only to ensure that the registers are current and reliable records. In this regard, the particulars entered in the registers must necessarily be true, accurate and correct. After all, these records serve to form evidence of any birth or death as the case may be (s. 33); and in the larger sense, the source and indices of the population of this country. (para 49)

(5) In the case of illegitimate births, s. 13 provides that whilst the registration of such births may still be by any of the qualified informants mentioned in s. 7, the name of the father of the child may not be entered except at the joint request of the mother and the person acknowledging himself to be the father of the child. Even then, these two persons must attend the office of the Registrar-General and sign the register together. In the present appeal, the registration of the birth of the child was in accordance with the terms of ss. 7, 13 and 13A. At the material time of registration, there was no joint request and agreement from the appellant to have his name entered as the father of the child. Even if the appellant said he was agreeable had he been asked, it would still not meet the requirements of s. 13 as the second respondent was not agreeable to

making a joint request. For the purposes in this appeal, the reasons for the lack of a joint request and agreement were really irrelevant. Given the circumstances in this appeal, the entry in the register, though rightly recorded as 'maklumat tidak diperolehi', no longer holds true. (paras 50 & 52)

(6) Following the DNA results and more particularly, the order of the court declaring the appellant as the biological father of the child, it could not now be said that the information pertaining to the father of the child is or remains, unavailable or 'tidak diperolehi'. The information has since been made known and available through the order of the court. Quite rightly and in keeping with the duties and obligations of maintaining a public record of births which is reliable and can be relied on, the Registrar-General cannot refuse the new information. It would make no sense for the Registrar-General to maintain a record or register where the information on the father of the child is now inaccurate or untrue. On the contrary, in the face of the declaratory order, the Registrar-General would be failing in his statutory duties in not correcting the records in relation to the child's father. (para 53)

(7) When approached with the latest information (as set out in the declaratory order of the court), the Registrar-General ought to have facilitated the correction or alteration as he is empowered to do so under s. 27. Correcting the records in the instant case would by no means render the information when first recorded at the time of birth of the child as inaccurate. Neither could it be suggested to run contrary to the interests or rights of the second respondent as mother of the child as accorded under s. 13. That right remains intact as under s. 27(3), while 'any error of fact or substance in any register may be corrected by entry', this is 'without any alteration of the original entry'. Hence, the issue of interference with the mother's rights and the matter of whether she was under an obligation to provide the name or details of the father of the child, did not arise. (para 54)

(8) The object and scheme of the Act together with the relevant provisions, namely s. 27 read with s. 28 ought to have compelled the Registrar-General to carry out his statutory duties of correcting and updating of records. In executing that function, the protection afforded by ss. 13 and 13A to the mother and the putative father of an illegitimate child is unaffected. The appellant herein had requested the Registrar-General to update the register following the undisputed DNA results and the order of the High Court declaring the appellant as the biological father of the child; that with this latest information, the record of the identity of the father of the child as 'maklumat tidak diperolehi' surely could no longer be maintained but must be updated by way of a correction or amendment. That request was fair and proper as the declaratory order of the court was valid and remained effective. With that declaratory

order of the court, the 'maklumat' or information on the identity of the father of the child was now undisputedly available; that the appellant was the biological father of the child. (paras 65-67)

(9) The appellant had maintained regular access to the child as was first granted to him by the High Court under the Guardianship of Infants Act 1961. The child was fully aware that the appellant was his biological father. This new information ought to be reflected in the public record, the register, that the true status of the child be corrected to reflect accurate information as regards the biological father, as required by the scheme of the Act. Correcting the register to reflect the declaratory order of the court was in the best interest and welfare of the child; consonant with the principles under the Convention on the Rights of the Child, to which Malaysia had acceded and ratified to. Thus, this court answered the question of law posed in the affirmative. (paras 67, 68 & 72)

Obiter:

(1) The beginning of life, the arrival of a new-born should be celebrated with joy and a sense of well-being. The inclusion of the name of a person as the mother or father of a new-born child does not necessarily mean that such named mother or father is the legitimate or even biological parent of the child, given the advent of assisted or *in vitro* fertilisation and surrogacy (distinguishing further between birth, natural and genetic parents) and without casting any moral judgment, the practice of cohabitation. Had it been properly appreciated at the outset, that the registration of births by the Registrar-General is essentially administrative and facilitative, and not a judicial function, there would have been a prescience to obviate any if not all the obstacles that were presented in this appeal. (para 71)

Bahasa Melayu *Headnotes*

Perayu berjaya mendapatkan perintah mahkamah melalui saman pemula ('SP') yang mengisytiharkannya sebagai bapa kandung seorang kanak-kanak yang dilahirkan pada 16 Julai 2015 di Pusat Perubatan Sunway ('kanak-kanak'). Perintah pengisytiharan itu diberikan setelah Mahkamah Tinggi di SP sebelumnya memerintahkan agar ujian asid deoxyribonucleic atau lebih dikenali sebagai 'ujian DNA' dilakukan pada responden kedua dan kanak-kanak itu. Pihak-pihak yang berkenaan, iaitu perayu, responden kedua dan kanak-kanak itu, memberikan sampel darah yang diperlukan untuk ujian itu. Laporan yang dikeluarkan oleh Jabatan Kimia yang menjalankan ujian DNA menunjukkan bahawa perayu adalah bapa kandung anak itu. Menurut perayu, kanak-kanak itu hasil hubungannya dengan responden kedua. Responden kedua, ibu kepada kanak-kanak itu, telah mendaftarkan kelahiran kanak-kanak itu tanpa pengetahuan perayu yang membawa kepada butir-butir bapa kanak-kanak itu dicatat sebagai 'maklumat tidak diperolehi' atau

maklumat yang tidak tersedia ada. Perayu mendakwa bahawa sekiranya dia tahu tentang pendaftaran kanak-kanak itu, dia akan hadir di tempat yang sama dan mencatat butirannya. Perayu memfailkan prosiding ini, dengan menyatakan Ketua Pendaftar Kelahiran dan Kematian di Jabatan Pendaftaran Negara, Malaysia sebagai responden pertama dan ibu kanak-kanak itu sebagai responden kedua. Pada asasnya, perayu mendakwa bahawa responden kedua gagal memberikan maklumat yang berkaitan dengan bapa kanak-kanak itu pada waktu pendaftaran kelahiran kanak-kanak itu walaupun memiliki maklumat tersebut. Terhadap responden pertama, kes perayu hanya ini – bahawa daftar yang mengandungi butir-butir yang tidak lengkap mengenai bapa kanak-kanak itu harus dikemas kini untuk mencerminkan perintah deklarasi yang diberikan oleh Mahkamah Tinggi dalam SP, bahawa perayu adalah bapa kandung kanak-kanak itu. Mahkamah Tinggi, apabila membenarkan perintah-perintah dalam permohonan perayu, memutuskan antara lain bahawa (i) responden pertama mempunyai kewajipan statutori untuk menerima maklumat berkaitan kelahiran kanak-kanak itu; dan (ii) bawah s. 28 Akta Pendaftaran Kelahiran dan Kematian 1957 ('Akta'), responden pertama mempunyai kewajipan menyimpan butiran yang benar dan betul dalam daftar. Mahkamah Rayuan, walau bagaimanapun, tidak bersetuju dengan Mahkamah Tinggi, dan berpendapat bahawa (i) s. 28 tidak boleh menggantikan s. 13 Akta; dan (ii) keputusan Mahkamah Tinggi 'bertentangan dengan dasar awam', 'budaya rakyat' dan 'nilai agama'. Oleh itu, rayuan ini. Persoalan yang timbul adalah sama ada Jabatan Pendaftaran Negara mempunyai kewajipan statutori untuk merekodkan butir-butir bapa kandung seorang kanak-kanak yang tidak sah taraf dan/atau untuk membetulkan/meminda mengemas kini rekod tersebut, apabila bukti dan fakta yang tidak dipertikaikan tersedia ada.

Diputuskan (membenarkan rayuan)
Oleh Mary Lim HMP menyampaikan penghakiman mahkamah:

(1) Setiap kelahiran dan kematian mesti didaftarkan atau dimaklumkan pada Pendaftar yang berkenaan oleh orang yang dikenal pasti bawah Akta; orang-orang tersebut yang digambarkan sebagai 'pemberi maklumat yang berkelayakan' (s. 7(3)). Kewujudan peruntukan ini hanya berfungsi menekankan pentingnya pendaftaran setiap kelahiran (dan kematian). Ini selanjutnya digariskan oleh fakta bahawa Pendaftar wajib menerima setiap pendaftaran (s. 7). Adalah menjadi kesalahan bawah s. 34, untuk Pendaftar menolak pendaftaran kecuali jika ada sebab yang munasabah untuk penolakan atau peninggalan untuk mendaftar.

(2) Butiran yang dimasukkan dalam daftar adalah 'butir-butir mengenai kelahiran sebagaimana yang ditentukan'. Untuk tujuan ini dan menurut kuasa membuat peraturan bawah s. 39 Akta, Peraturan-Peraturan Pendaftaran Kelahiran dan Kematian 2019, terpakai. Maklumat dalam daftar mestilah benar dan betul; sama ada daripada pemberi maklumat

yang berkelayakan atau pendaftar yang memasukkan butir-butir yang diberikan. Agar maklumat yang relevan dimasukkan dalam daftar adalah benar dan betul, maklumat mesti tepat, terutama pada waktu material maklumat diberikan. Sekiranya terdapat kesilapan atau peninggalan yang kemudiannya 'ditemui' dalam mana-mana daftar, ini boleh diperbetulkan oleh Ketua Pendaftar.

(3) Seksyen 28 mengenakan tugas positif pada Pengawas-Pendaftar dan Pendaftar (mereka membantu Ketua Pendaftar dalam fungsi dan tugas bawah Akta) untuk 'membuktikan dengan segala cara dalam kuasa mereka maklumat terbaik dan paling tepat mengenai mana-mana kelahiran, kelahiran mati atau kematian yang mungkin berlaku di kawasan pendaftaran mereka dan menyebabkan butir-butir yang sama direkodkan (sejauh yang boleh dilaksanakan) dengan cara yang ditetapkan'. Jelas, maksud sebalik s. 28 adalah untuk memohon Ketua Pendaftar dan pegawainya mengambil langkah proaktif untuk memastikan semua kelahiran (dan kematian) didaftarkan, dan hanya 'maklumat terbaik dan paling tepat' dimasukkan dalam daftar. Ketua Pendaftar bahkan mempunyai kuasa mengemas kini pendaftaran semula orang yang disahkan yang ibu bapanya telah mengabaikan pendaftaran semula kelahiran mereka setelah ibu bapa yang berkenaan telah berkahwin dengan menghendaki ibu bapa untuk hadir secara peribadi dan memberikan maklumat yang diperlukan untuk pendaftaran semula.

(4) Semua tugas ini ditambah dengan kuasa membetulkan dan mengubah kemasukan dalam daftar, sambil mengekalkan kemasukan asal, hanya berfungsi memastikan bahawa daftar adalah catatan terkini dan boleh dipercayai. Dalam hal ini, butir-butir yang dimasukkan dalam daftar mestilah benar, tepat dan betul. Bagaimanapun, catatan ini berfungsi menjadi bukti kelahiran atau kematian mengikut kes (s. 33); dan dalam pengertian yang lebih besar, sumber dan indeks penduduk negara ini.

(5) Dalam kes kelahiran tidak sah taraf, s. 13 memperuntukkan bahawa sementara pendaftaran kelahiran tersebut mungkin masih dilakukan oleh mana-mana pemberi maklumat yang berkelayakan yang disebutkan dalam s. 7, nama bapa kanak-kanak itu tidak boleh dimasukkan kecuali atas permintaan bersama ibu dan orang yang mengakui dirinya sebagai bapa kanak-kanak tersebut. Walaupun begitu, kedua-dua orang ini mesti menghadiri pejabat Ketua Pendaftar dan menandatangani daftar bersama. Dalam rayuan ini, pendaftaran kelahiran anak itu adalah menurut syarat-syarat ss. 7, 13 dan 13A. Pada masa pendaftaran, tiada permintaan dan persetujuan bersama daripada perayu agar namanya dimasukkan sebagai bapa kepada kanak-kanak itu. Walaupun perayu menyatakan bahawa dia setuju sekiranya ditanya, ini tetap tidak memenuhi syarat s. 13 kerana responden kedua tidak bersetuju untuk

membuat permintaan bersama. Bagi tujuan rayuan ini, alasan tiada permintaan dan persetujuan bersama benar-benar tidak relevan. Berdasarkan keadaan dalam rayuan ini, catatan dalam daftar, walaupun dengan tepat dicatat sebagai 'maklumat tidak diperolehi', tidak lagi benar.

(6) Berikutan hasil DNA dan, lebih khusus lagi, perintah mahkamah yang mengisytiharkan perayu sebagai bapa kandung kanak-kanak itu, tidak dapat dinyatakan sekarang bahawa maklumat yang berkaitan dengan bapa kanak-kanak itu adalah atau kekal tidak tersedia ada atau 'tidak diperolehi'. Maklumat itu telah diketahui dan tersedia melalui perintah mahkamah. Cukup tepat dan sesuai dengan tugas dan kewajipan untuk menjaga catatan kelahiran umum yang boleh dipercayai dan dapat dirujuk, Ketua Pendaftar tidak boleh menolak maklumat baharu. Tidak masuk akal untuk Ketua Pendaftar menyimpan rekod atau daftar yang maklumat tentang bapa kanak-kanak itu sekarang tidak tepat atau tidak benar. Sebaliknya, apabila berdepan dengan perintah deklarasi, Ketua Pendaftar akan gagal dalam kewajipan statutorinya apabila tidak membetulkan catatan yang berkaitan dengan bapa kanak-kanak itu.

(7) Ketika diberi maklumat terbaru (seperti yang dinyatakan dalam perintah deklarasi mahkamah), Ketua Pendaftar seharusnya membetulkan atau membuat perubahan kerana dia diberi kuasa melakukannya bawah s. 27. Membetulkan rekod dalam kes ini tidak akan menjadikan maklumat ketika pertama kali direkodkan pada saat kelahiran anak itu tidak tepat. Juga tidak boleh disarankan bahawa ini bertentangan dengan kepentingan atau hak responden kedua sebagai ibu kanak-kanak itu sebagaimana yang diperuntukkan bawah s. 13. Hak itu tetap utuh seperti bawah s. 27(3), sementara 'setiap kesalahan fakta atau bahan dalam mana-mana daftar dapat diperbaiki dengan kemasukan', ini adalah 'tanpa perubahan kemasukan asal'. Oleh itu, masalah gangguan hak ibu dan masalah sama ada dia berkewajipan untuk memberikan nama atau butir-butir bapa kandung kanak-kanak itu, tidak timbul.

(8) Tujuan dan skema Akta bersama dengan peruntukan yang berkaitan, iaitu s. 27 dibaca dengan s. 28, seharusnya menegaskan Ketua Pendaftar menjalankan tugas undang-undangnya untuk membetulkan dan mengemas kini rekod. Dalam melaksanakan fungsi itu, perlindungan diberikan oleh ss. 13 dan 13A kepada ibu dan bapa kanak-kanak yang tidak sah taraf tidak terjejas. Perayu meminta Ketua Pendaftar untuk mengemas kini daftar berikutan hasil DNA yang tidak dipertikaikan dan perintah Mahkamah Tinggi yang mengisytiharkan perayu sebagai bapa kandung kanak-kanak itu; bahawa dengan maklumat terkini ini, rekod identiti bapa kanak-kanak itu sebagai 'maklumat tidak diperolehi' pasti tidak lagi dapat dikekalkan tetapi mesti dikemas kini melalui

pembetulan atau pindaan. Permintaan itu adil dan tepat kerana perintah deklarasi mahkamah adalah sah dan tetap berkesan. Dengan perintah pengisytiharan mahkamah, 'maklumat' atau maklumat tentang identiti bapa kanak-kanak itu kini tidak dapat dipertikaikan; perayu adalah bapa kandung kanak-kanak itu.

(9) Perayu telah mengekalkan akses pada kanak-kanak itu seperti yang diberikan kepadanya oleh Mahkamah Tinggi bawah Akta Penjagaan Budak 1961. Kanak-kanak tersebut sedar bahawa perayu adalah bapa kandungnya. Maklumat baharu ini harus dicerminkan dalam catatan umum, iaitu daftar, bahawa status sebenar kanak-kanak itu dibetulkan untuk mencerminkan maklumat yang tepat tentang bapa kandungnya, seperti yang disyaratkan oleh skema Akta. Membetulkan daftar untuk menggambarkan perintah deklarasi mahkamah adalah demi kepentingan dan kesejahteraan kanak-kanak itu; sesuai dengan prinsip-prinsip bawah Konvensyen Hak Kanak-kanak, yang telah disetujui dan disahkan oleh Malaysia. Oleh itu, mahkamah ini menjawab persoalan undang-undang yang diajukan secara afirmatif.

Obiter:

(1) Permulaan hidup, ketibaan bayi yang baru lahir harus diraikan dengan kegembiraan dan rasa kesejahteraan. Kemasukan nama seseorang sebagai ibu atau bapa kanak-kanak yang baru lahir tidak semestinya bermaksud bahawa ibu atau bapa yang dinamakan itu adalah ibu bapa kanak-kanak yang sah atau kandung, memandangkan munculnya persenyawaan dan pengganti yang dibantu atau *in vitro* (membezakan lebih jauh antara ibu bapa kandung, semula jadi dan genetik) dan tanpa membuat penilaian moral, amalan bersekedudukan. Sekiranya pada awalnya dihargai dengan tepat, bahawa pendaftaran kelahiran oleh Ketua Pendaftar pada dasarnya bersifat pentadbiran dan fasilitatif, dan bukan fungsi kehakiman, akan ada kesedaran untuk mengelakkan mana-mana atau kesemua halangan yang dibentangkan dalam rayuan ini.

Case(s) referred to:

AFE v. Registrar of Births, Deaths and Marriages [2011] NSWADT 201 ***(refd)***

In The Matter Of s. 60(8) Of The Civil Registration Act 2004 And In The Matter Of MR And DR (Minors Suing By Their Father And Next Friend OR), OR & CR v. An-tard Chlaraitheoir, Ireland And The Attorney General & Ors [2014] IESC 60 ***(refd)***

Jabatan Pendaftaran Negara & Ors v. Seorang Kanak-kanak & Ors; Majlis Agama Islam Negeri Johor (Intervener) [2020] 4 CLJ 731 FC ***(refd)***

Mayo v. Mayo [1948] 2 All ER 869 ***(refd)***

Nabors Drilling (Labuan) Corporation v. Lembaga Perkhidmatan Kewangan Labuan [2020] 10 CLJ 732 FC ***(refd)***

Perring v. Perring & Simpson [1949] 2 All ER 334 ***(refd)***

Sean O'Casey Patterson v. Chan Hoong Poh & Ors [2011] 3 CLJ 722 FC ***(refd)***

Teoh Hock Soon v. Chan Peng Yee [2012] 2 CLJ 960 HC ***(refd)***

Legislation referred to:

Births and Deaths Registration Act 1957, ss. 1, 5, 7(3), 8, 11, 12, 13, 13A, 15(3), 17, 27(1), (2), (3), (4), (5), 28, 31, 32, 33(1), 34, 39
Births and Deaths Registration Rules 2019, First Schedule
Courts of Judicature Act 1964, s. 14

Births, Deaths and Marriages Registration Act 1995 [Aus], s. 18
Births and Deaths Registration Act 1953 [UK], s. 10
Care of Children Act 2004 [NZ], s. 17(2)
Children's Act 38 of 2005 [South Africa], ss. 19, 21
Civil Code of the Philippines [Philippines], art. 176

For the appellant - Balwant Singh Sidhu & Kelvinder Singh Sidhu; M/s Balwant Singh Sidhu & Co
For the 1st respondent - Suzana Atan & Narkunavathy Sundareson; SFCs & Kogilambigai Muthusamy; FCs
For the 2nd respondent - Ng Kiam Nam; M/s Ng Kian Nam & Partners

[Editor's note: Appeal from Court of Appeal; Civil Appeal No: W-01(A)-294-08-2017 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Mary Lim FCJ:

[1] This case brings to the fore, once again, the role and duty of the Registrar-General of Births and Deaths ("the Registrar-General"), the first respondent in this appeal, and the status of records of new lives and the passing of such lives in the register and indices maintained by the Registrar-General. As we see it, the register is a public record, accessible on terms, while the Registrar-General's role is necessarily facilitative, objectively exercised. This case and its peculiar facts illustrate that understanding. Had that role and duty been properly appreciated from the outset, a substantial amount of misconception and angst would have been avoided.

[2] The single question before this court is:

> Whether the national registration department is under a statutory duty to record the particulars of the natural father of an illegitimate child and/or to correct/amend/update such records, when evidence and undisputed facts are available

[3] We were unanimous in answering this poser in the affirmative and our reasons are as follows.

Relevant Background Facts

[4] On 25 August 2016, the appellant successfully procured an order of court *vide* Originating Summons No: 24F-172-10-2015 ("OS") declaring him as the biological father of a child born on 16 July 2015 at Sunway Medical Centre, Selangor Darul Ehsan ("the child"). That declaratory order was

granted after the High Court in the OS had earlier ordered on 25 February 2016 that a deoxyribonucleic acid test or more commonly known as a "DNA test" be conducted on the second respondent and the child. The relevant persons, namely the appellant, the second respondent and the child, provided the necessary blood samples for that test. The report dated 13 April 2016 prepared by the Chemistry Department which carried out the DNA test revealed that the appellant is the biological father of the child. Together with the declaratory order, the appellant obtained regular access to the child which he continues to have to this date. There were no appeals against these orders.

[5] Now, the basis for those orders also forms a substantial part of the factual substratum of the case in this appeal. Those facts which are largely undisputed are as explained in the affidavits exchanged between the appellant and the second respondent.

[6] According to the appellant, the child is from a four-year live-in relationship which he had with the second respondent. The second respondent who is the mother of the child had registered the birth of the child without his knowledge leading to the particulars of the father of the child being recorded as "maklumat tidak diperolehi" or information unavailable. The appellant claimed that had he known of the registration, he would have attended the same and have his details so recorded.

[7] All this occurred because the appellant and the second respondent were not married to each other, be it then or even now. In fact, the second respondent was married to someone else with whom she has another child at the time of the birth of the child. The second respondent has since reunited with the estranged husband and she now lives with him and the two children.

[8] In short, the child is illegitimate.

[9] Although the appellant had sought in the OS a prayer that the National Registration Department be directed to register the appellant's surname to the child, the appellant withdrew that particular prayer, informing the High Court that he would be filing fresh proceedings for that purpose and citing the National Registration Department as one of the parties. And, that was precisely what the appellant did. He filed the present proceedings, citing the Registrar-General of Births and Deaths at the National Registration Department, Malaysia as the first respondent, and the mother of the child as the second respondent.

[10] In essence, the appellant claimed that the second respondent had failed to provide the relevant information pertaining to the father of the child at the material time of registration of the birth of the child despite being in possession of such information. As regards the first respondent, the appellant's case is simply this – that the register which contains incomplete

particulars on the father of the child should be updated to reflect the declaratory order granted by the High Court in the OS, that he is the biological or natural father of the child.

[11] This is evident from the principal orders sought at the High Court:

> 1. Pendaftar Kelahiran dan Kematian, Jabatan Pendaftaran Malaysia, diperintahkan untuk mendaftarkan nama Plaintif sebagai bapa kandung kanak-kanak yang dikenali sebagai KANAK-KANAK L, yang dilahirkan kepada Defendan Kedua pada 16/7/2015 di Sunway Medical Centre, Subang Jaya, Petaling Jaya, Selangor D.E. di dalam Sijil Kelahiran kanak-kanak tersebut;
>
> 2. Pendaftar Kelahiran dan Kematian, Jabatan Pendaftaran Malaysia, juga diperintahkan untuk mendaftarkan nama keluarga (surname) anak itu, seperti nama keluarga Plaintif;
>
> 3. Relief selanjutnya atau lain-lain relief yang difikirkan adil dan suai manfaat oleh Mahkamah Yang Mulia ini.

[12] The High Court granted both orders in the application *albeit* opposed by the respondents. On appeal, the orders of the High Court were set aside. Only the first of the two orders are pursued in this appeal before us. The appellant is not pursuing an order that the child bears his surname.

Reasonings Of The High Court And Court Of Appeal

[13] The High Court reasoned from the terms of ss. 4, 7, 8, 13, 13A and 28 of the Births and Deaths Registration Act 1957 ("Act 299") and the background facts as set out above that:

(i) the first respondent has a statutory duty to receive information pertaining to a child's birth;

(ii) under s. 28 of the Act 299, the first respondent is duty-bound to maintain details or particulars in the register which are true and correct;

(iii) the mother of an illegitimate child is not allowed to enter in the register any name as the father of the child without the consent of the father due to ramifications on paternity and inheritance issues;

(iv) the presumption that the husband of a married woman is the father of a child does not apply as there is conclusive evidence that the appellant is the biological father of the child;

(v) there was evidence that the appellant has shown efforts to take care of the child in which case the first respondent was ordered to correct the mistake relating to the father of the child; and

(vi) the surname of the child may be changed to the appellant's surname as there is a request from him to do so and because he had access to the child.

[14] The High Court further disagreed with the first respondent's submission that in the case of an illegitimate child, s. 13 mandatorily requires the consent of the mother of the child before the name of the biological father may be included at the time of registration of the child's birth.

[15] The Court of Appeal disagreed with the High Court, approaching the matter from two entirely different perspectives. First, that s. 28 does not supersede s. 13 of the Act 299; second, that the decision of the High Court was "in conflict" with "public policy", "culture of the people" and "religious values". "Public policy" was however, not defined by the Court of Appeal.

Submissions

[16] In gist, the appellant maintained that from a reading of ss. 7 and 13 of the Act 299, the appellant as the father of the illegitimate child is not under a legal duty to inform of the birth of the child. Instead, it is the second respondent, as the mother of the child who is under a legal duty to do so as she comes within the category of persons identified in s. 7 who would be "qualified to give information concerning a birth", even where the child is illegitimate. Section 7 provides such persons are the father or mother of the child; the occupier of the house in which the child was to the knowledge of that occupier born; any person presents at the birth; or any person having charge of the child. The appellant does not come within any of the categories set out in s. 7.

[17] However, when registering the birth of the illegitimate child, the mother is not permitted under s. 13 to name the father of the child unless the father acknowledges himself to be the father. In such an event, both the mother and father are required to put in a joint request for the father's particulars to be entered and the register has to be signed by both of them.

[18] This did not happen. In the appellant's version of the events, the second respondent surreptitiously registered the birth of the child thus depriving him the opportunity of acknowledging himself as the father of the child and utilising the process under s. 13.

[19] Regardless, he has since been declared the biological father of the child. And, reading ss. 4, 7, 8 and 28 of the Act 299, the appellant submitted that the first respondent who is under a statutory duty to maintain a register of all births in Malaysia, where the prescribed particulars must be accurate, the first respondent is then duty-bound to update the register and record the correct particulars pertaining to the father of the child.

[20] The respondents' respective submissions focused almost entirely on the interpretation and construction of s. 13 of the Act 299.

[21] Insofar as the first respondent is concerned, the submission runs along these lines. First, Act 299 was modelled after the Births and Deaths Registration Act 1953 of the United Kingdom. Under that Act of 1953 and

English common law, it is said that a putative father has no rights over his illegitimate child; those rights belong solely to the natural mother – see *Teoh Hock Soon v. Chan Peng Yee* [2012] 2 CLJ 960; [2012] MLJU 71.

[22] Next, the interpretation and operation of s. 13 and to some extent, s. 13A. According to learned SFC, these are specific provisions governing the registration of illegitimate children; in which case, these provisions override the general terms in s. 28 and also s. 7 with regard to the list of persons who are qualified to give information concerning a birth. By the terms of s. 13, a "natural" or "biological" father of an illegitimate child (for the purposes of this appeal, the terms are used interchangeably) is precluded from giving information concerning the birth of the child, and the first respondent is correspondingly prohibited from entering his name in the register. The only exception is where there is a joint request of the mother and the person acknowledging himself to be the father of the illegitimate child.

[23] Learned SFC submitted that s. 13 provides for two obligatory requirements before the putative father of the illegitimate child may have his details and surname recorded in the register. First, there must be a joint request from both the mother and the person acknowledging himself as the father of the illegitimate child. Second, both these persons must attend and sign the register at the time of registration.

[24] From this, learned SFC makes the submission that the biological mother of an illegitimate child has no duty to provide the name of the father to the first respondent at the time of registration of birth. Where the biological mother refuses to have the biological father's details inserted or included in the register, then his details cannot be so included. In this appeal, the second respondent's deliberate and intentional registration of the birth of the child on a "single application" as opposed to a "joint application", inserting only her particulars and offering none for the father of the child, is said to be an exercise of her rights under s. 13. She cannot be compelled to make a joint application.

[25] Learned SFC added that there is actually no legal requirement or prerequisite under ss. 13, 13A, 28 or any other provisions of Act 229 for either of the respondents to inform the appellant of the registration of the birth of the child at the material time.

[26] This position remains regardless the DNA test result and the declaratory order granted by the High Court. In the first respondent's view, the High Court was erroneous to have taken the following extraneous and irrelevant factors into consideration:

(i) the conclusive findings of the DNA test confirming the appellant as the biological father of the child;

(ii) the appellant's access to the child under the Guardianship of Infants Act 1961 (Act 351) and the exercise of such rights of access;

A (iii) the fear of problems pertaining to distribution of estate or property to the child;

(iv) the right of the child to obtain love and care from both the second respondent and the appellant;

B (v) the failure of the second respondent in informing the appellant of the registration of birth of the child; and

(vi) the child knows the appellant.

[27] We note that the learned SFC had also submitted that the appellant has "evidence which he may use to show that he is the biological father without C even the need to make such amendments to certify he is the natural father of the said child". Further, it was suggested that it would be illegal for the court to instruct the first respondent to include the appellant's particulars in the birth certificate despite there being no such duty imposed under Act 229. In the words of learned SFC, "the only way for such statutory duty to be D imposed is for the said law itself to be amended". The United Kingdom from whence we took our Act 299 is amongst the jurisdictions which have amended their existing Family Law Reform Act 1987 to deal *inter alia* with the registration of the natural father's name in the birth certificate where the child is illegitimate. Unfortunately, Malaysia has not amended Act 299 to E deal with the situation as presented in this appeal; hence it was urged upon us to dismiss the appeal.

[28] Learned counsel for the second respondent made similar submissions; citing *Nabors Drilling (Labuan) Corporation v. Lembaga Perkhidmatan Kewangan Labuan* [2020] 10 CLJ 732; [2020] 12 MLJ 54 on the principle that the F specific provisions of ss. 13 and 13A must prevail over the general terms of s. 28; that the absence of the two mandatory requirements of joint request and attendance to sign the register meant that the appellant's details could not be inserted in the register. Like the first respondent, the second respondent argued that the fact that the appellant has been declared the biological father G of the child makes no difference in view of the second respondent's rights under s. 13, which rights she has refused to waive. In fact, she objects to the insertion or inclusion of the appellant's particulars.

[29] Finally, the second respondent contended that it was not in the child's best interest for the appellant's particulars to be inserted given that:

H (i) the second respondent has full custody, care and control of the child;

(ii) the second respondent has reconciled with her husband, and the child now lives with them;

(iii) the appellant has since had another child with another person; and I

(iv) there is no public advantage to having the appellant's particulars inserted, on the contrary it is against public interest to do so.

[30] It was also suggested that allowing the appeal would open up the "floodgates" and encourage other fathers of illegitimate children to make similar applications even though there were no joint requests to start with, thus running afoul of the intentions of Parliament as reflected in ss. 13 and 13A.

Our Decision

[31] We remind ourselves the intent of Act 299, that its sole object or purpose is the registration of births and deaths. This is evident from the long title of Act 299; describing it as an Act "relating to the registration of births and deaths", period. Act 299 does not apply to the States of Sabah and Sarawak – see s. 1. These States have their own Ordinances – see Registration of Births and Deaths Ordinance (Sabah Cap. 123) and Registration of Births and Deaths Ordinance (Cap 10 (1958 edn) for Sarawak).

[32] Act 299 envisages registers to be maintained of all births and deaths in Peninsular Malaysia. In the case of births, different registers are in fact maintained for livebirths and stillbirths and this is evident from the terms of s. 7:

> **Particulars of births to be registered**
>
> 7. (1) Subject to the provisions of this Part, the birth of every child born ln Malaysia shall be registered by the Registrar in any registration area by entering in a register such particulars concerning the birth as may be prescribed; and different registers shall be used and different particulars may be prescribed for live-births and still-births respectively:
>
> Provided that, where a living child is found exposed and no information as to the place of birth is available, the birth shall be registered by the Registrar for the registration area in which the child is found.

[33] This statutory role of maintaining such public records is further evident from the terms of s. 5. According to s. 5, at the end of each year, presumably the Gregorian calendar year, the Registrar-General is required to compile a summary of births and deaths of the preceding year and "a general report on the increase or decrease of the population and on any special causes appearing to affect such increase or decrease, so far as the same can be adduced from the registers".

[34] Although the registers kept and maintained by the Registrar-General are not open to public inspection, a search may be made and an abstract from the registers, obtained. Under s. 31, any person may, upon payment of the prescribed fee, apply in the prescribed form, to have a search made in the indices or registers maintained by the Registrar-General; presumably to use the data or information supplied for a proper use. Section 33(1) further provides that "an entry or a certificate of birth ... shall be received without

A further or other proof as evidence of such facts and particulars relating to such birth ... as are or were at the time of the making of such entry required by law to be set forth in such entry or certificate".

[35] In substance then, the registers are meant to form the source or act as both the depository and repository of raw data of the nation's population. B David Wong Dak Wah CJSS made similar observations in *Jabatan Pendaftaran Negara & Ors v. Seorang Kanak-kanak & Ors; Majlis Agama Islam Negeri Johor (Intervener)* [2020] 4 CLJ 731, that "the purpose of the scheme of the BDRA 1957 is not to establish conclusively the facts of parent's parentage, but merely as a repository for the information of the State". C Likewise, Nallini Pathmanathan FCJ in the same decision – see para. [244]. Though dissenting judgments, this observation on this aspect of Act 299, in our view, is correct as can be seen from our elaborations as set out above.

[36] On a different but equally important level, and here we make specific reference to the persons whose particulars of births are registered – the D implications of the information in the registers have indeed, far-reaching ramifications. Under art. 24(2) of the International Covenant on Civil and Political Rights ("ICCPR"), the birth of every child must be immediately registered. Although Malaysia has yet to ratify the ICCPR, its terms are no less significant as universal principles.

E

[37] The details of birth in the registers maintained by the Registrar-General are abstracted in the form of certificates of births issued by the Registrar-General (see s. 32). These certificates are absolutely vital for personal identity, lineage, inheritance, citizenship, the pursuit of education and just about every facet of decent life and livelihood. These are essentials F of life and livelihood. This was acknowledged by the Deputy Minister for Home Affairs when tabling the amendments to Act 299 on 18 April 1975:

> Sijil beranak adalah salah satu daripada dokumen-dokumen yang penting dalam kehidupan seseorang ... Dengan demikian, maka rekod-rekod berkaitan dengan kelahiran-kematian adalah sangat perlu dijaga dengan G rapi untuk mengelakkan daripada berlakunya sebarang pemalsuan, salahgunaan dan sebagainya.

[38] Bearing in mind the significance of these registers and the importance of the information contained therein, we make two critical observations.

H **[39]** First, it makes sense that every birth and death must be timeously registered or informed to the relevant Registrar by the persons identified under the Act; such persons described as "qualified informants" - see s. 7(3). Initially, the period for registration of all births was within 14 days from the date of birth. This period has since been amended to 60 days. There are however, provisions for delayed and late registration - see ss. 11 and 12. I

[40] In our view, the presence of these provisions serves only to emphasise the importance of registration of every birth (and death). This is further underscored by the fact that Registrars are mandatorily obliged to accept every registration – see s. 7 which reads as follows:

> **Particulars of births to be registered**
>
> 7. (1) Subject to the provisions of this Part, the birth of every child born ln Malaysia shall be registered by the Registrar in any registration area by entering in a register such particulars concerning the birth as may be prescribed; and different registers shall be used and different particulars may be prescribed for live-births and still-births respectively:
>
> Provided that, where a living child is found exposed and no information as to the place of birth is available, the birth shall be registered by the Registrar for the registration area in which the child is found.

[41] In fact, it is an offence under s. 34, for Registrars to refuse registration save and except where there is reasonable cause for refusal or omission to register.

[42] The second observation is this. The details that are entered into the register are "such particulars concerning the birth as may be prescribed". For this purpose and pursuant to the rules-making powers under s. 39 of the Act 299, the Births and Deaths Registration Rules 2019 (PU(A) 54/2019), repealing and replacing the earlier Rules of 1958 and in effect since 1 March 2019, apply.

[43] It goes without saying that the particulars in the registers must be true and correct; whether on the part of the qualified informant or the Registrar entering the particulars provided. This was observed by the majority in *Jabatan Pendaftaran Negara & Ors v. Seorang Kanak-kanak & Ors; Majlis Agama Islam Negeri Johor (Intervener)* (*supra*). Although made in reference to a notation under s. 13, that the "notation is purely a true reflection of the record of the birth of the child", the observation is entirely apt having regard to the role of these registers. It would be frightening to consider a register which is fraught with inaccuracies or worse, false information so as to render any information reposed therein utterly unreliable and useless.

[44] However, we must add that for the relevant information entered into the registers to be true and correct, it must also be accurate, particularly at the material time the information is given.

[45] If any errors or omissions are subsequently "discovered" in any register, these may be corrected by the Registrar-General. Where the errors are clerical in nature, the correction is at the behest of and in the manner as directed by the Registrar-General. In other cases of errors of fact or substance, the correction is upon application. This is clear from the terms of ss. 27(1) to (3) which read as follows:

Correction of errors and alteration in register

27. (1) No alteration in any register shall be made except as authorized by this Act.

(2) Any clerical error which may from time to time be discovered in any register may be corrected by the Superintendent-Registrar, in such manner as the Registrar-General shall direct.

(3) Any error of fact or substance in any register may be corrected by entry (without any alteration of the original entry) by the Registrar-General upon payment of the prescribed fee and upon production by the person requiring such error to be corrected of a statutory declaration setting forth the nature of the error and the true facts of the case, and made by two persons required by this Act to give information concerning the birth, still-birth or death with reference to which the error has been made, or in default of such persons then by two credible persons having knowledge to the satisfaction of the Registrar-General of the truth of the case; and the Registrar-General may if he is satisfied of the facts stated in the statutory declaration cause such entry to be certified and the day and the month and the year when such correction is made to be added thereto.

[46] Then, there is s. 28 which imposes a positive duty on the Superintendent-Registrar and the Registrar (they assist the Registrar-General in the functions and duties under the Act) to "procure by all means in their power the best and most accurate information respecting any birth, stillbirth or death which may have occurred within their registration areas and to cause particulars of the same to be recorded (so far as is practicable) in the manner prescribed":

Duty of Superintendent Registrar to procure Registration

28. (1) Notwithstanding any omission to report or to furnish information as to any birth, still-birth or death within the time required by the preceding provisions of this Act, it shall be the duty of the Superintendent-Registrar and the Registrar to procure by all means in their power the best and most accurate information respecting any birth, still-birth or death which may have occurred within their registration areas and to cause particulars of the same to be recorded (so far as is practicable) in the manner prescribed.

(2) It shall be the duty of every police officer, penghulu and headman to obtain information of every birth, still-birth and death within his respective area and also information respecting the lawful father and the mother of every child born in his area and respecting the occupier of any house in his area in which any birth, still-birth or death may have taken place and to give notice thereof to the Registrar.

(3) Any police officer, penghulu or headman who has in his possession any such information and wilfully neglects or omits to disclose the same to the Registrar shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty ringgit.

[47] Clearly, the intent behind s. 28 is to require the Registrar-General and his officers to take proactive steps towards ensuring that all births (and deaths) are registered, and that only the "best and most accurate information" are entered into the registers. The Registrar-General even has a power to update the re-registration of legitimated persons whose parents have overlooked the re-registration of their births after the marriage of the parents concerned by requiring the parents to attend personally and give such information as are necessary for the re-registration (see s. 17).

[48] A final point to note is that where there is a correction or alteration to the register, the original entries in the registers are always maintained. This is evident from ss. 15(3) and 27(3), (4) and (5).

[49] In our view, all these duties coupled with the power to correct and alter any entry in the registers, whilst maintaining the original entries, serve only to ensure that the registers are current and reliable records. In this regard, the particulars entered in the registers must necessarily be true, accurate and correct. After all, these records serve to form evidence of any birth or death as the case may be (see s. 33); and in the larger sense, the source and indices of the population of this country.

[50] In the case of illegitimate births, s. 13 provides that whilst the registration of such births may still be by any of the qualified informants mentioned in s. 7, the name of the father of the child may not be entered except at the joint request of the mother and the person acknowledging himself to be the father of the child. Even then, these two persons must attend the office of the Registrar-General and sign the register together:

> **Provisions as to father of illegitimate child**
>
> 13. Notwithstanding anything in the foregoing provisions of this Act, in the case of an illegitimate child, no person shall as father of the child be required to give information concerning the birth of the child, and the Registrar shall not enter in the register the name of any person as father of the child except at the joint request of the mother and the person acknowledging himself to be the father of the child, and that person shall in that case sign the register together with the mother.

[51] Section 13 prohibits the Registrar-General from entering the name of the purported father of the illegitimate child except where there is a request for such entry from both parents and they have both signed their agreement for such entry – see Form JPN.LM01 as set out in the First Schedule to the Births and Deaths Registration Rules 2019. In such a case, s. 13A provides that the surname of the person acknowledging himself to be the father of the illegitimate child may be entered as the surname of that child. Otherwise, the illegitimate child may take the surname of the mother where the mother is the informant and where she volunteers the information. This situation does not present in this appeal since the appellant is not pursuing this relief.

[52] In the present appeal, the registration of the birth of the child was in accordance with the terms of ss. 7, 13 and 13A. At the material time of registration, there was no joint request and agreement from the appellant to have his name entered as the father of the child. Even if the appellant says he was agreeable had he been asked, it would still not meet the requirements of s. 13 as we understand the second respondent was not agreeable to making a joint request. For the purposes in this appeal, the reasons for the lack of a joint request and agreement are really irrelevant. We find however that, given the circumstances in this appeal, the entry in the register, though rightly recorded as "maklumat tidak diperolehi" no longer holds true.

[53] Following the DNA results and more particularly, the order of court declaring the appellant as the biological father of the child, it cannot be now said that the information pertaining to the father of the child is or remains, unavailable or "tidak diperolehi". The information is since known and made available through the order of court. Quite rightly and in keeping with the duties and obligations of maintaining a public record of births which is reliable and can be relied on, the Registrar-General cannot refuse the new information. It would make no sense for the Registrar-General to maintain a record or register where the information on the father of the child is now inaccurate or untrue. On the contrary, in the face of the declaratory order, the Registrar-General would be failing in his statutory duties in not correcting the records in relation to the child's father.

[54] When approached with the latest information (as set out in the declaratory order of court), the Registrar-General ought to have facilitated the correction or alteration as he is empowered to do so under s. 27. Correcting the records in the instant case would by no means render the information when first recorded at the time of birth of the child as inaccurate. Neither can it be suggested to run contrary to the interests or rights of the second respondent as mother of the child as accorded under s. 13. That right remains intact as under s. 27(3), while "any error of fact or substance in any register may be corrected by entry", this is "without any alteration of the original entry". Hence, the issue of interference with the mother's rights and the matter of whether she was under an obligation to provide the name or details of the father of the child, does not arise.

[55] The decision in *Sean O'Casey Patterson v. Chan Hoong Poh & Ors* [2011] 3 CLJ 722 was cited to us in support of the proposition that the particulars in the register can and ought to be corrected to reflect the appellant as the biological father of the child. In that case, an illegitimate child was adopted by his mother's sister who had converted when she married a Muslim. The appellant, the natural father of the child as confirmed by tests, learnt of the adoption and also that another man's name was entered as the child's father. The appellant filed an application challenging the validity of the adoption and conversion of the child while at the same time requesting that he be declared the biological father of the child, and that the Registrar-General

rectifies the relevant registers to name him as the father of the child. The High Court allowed the appellant's declarations that he is the natural father of the child and that the register be appropriately rectified. The remaining orders were dismissed. On appeal, the decision of the High Court was affirmed. However, the Court of Appeal went further to set aside the declaration and the order to rectify.

[56] The decision of the Court of Appeal was affirmed by the Federal Court. However, the Federal Court remarked in the closing paragraph of judgment that "we accept that the Court of Appeal had erred in revoking the second order of the High Court in respect of rectifying the birth certificate of J to reflect the plaintiff as the father of J. We set aside this part of the order of the Court of Appeal and reinstate the second order granted by the High Court".

[57] We do not find the decision of particular relevance to this appeal given that the questions posed therein revolved around the rights of the natural father in relation to the adoption of his child under the Adoption Act 1952 and the Registration of Adoptions Act 1952, and the applicable principles. Act 299 was not discussed by the court; neither does it appear to have been raised by the parties.

[58] But, one fact stands out – that the Federal Court was compelled to correct the decision of the Court of Appeal despite dismissing the appeal; directing the Registrar-General to correct the entries in the register on the identity of the appellant as the natural father speaks volumes. It confirms our view that the Registrar-General's role in these matters of registration of births is facilitative, and that the records maintained must contain only true, correct and accurate particulars. To leave the record of another man as the father of the child in that appeal in the face of uncontroverted evidence would be to lend legitimacy to what was wholly false.

[59] Finally, we want to address the matter of change of law. The contention of the two respondents is that because our s. 13 is *in pari materia* with s. 10 of the Births and Deaths Registration Act 1953 (1953 Chapter 20) of the United Kingdom and has remained unchanged since its introduction in 1957, we should interpret s. 13 following cases such as *Perring v. Perring & Simpson* [1949] 2 All ER 334; and *Mayo v. Mayo* [1949] P 172; [1948] 2 All ER 869; [1949] LJR 48, 92 Sol Jo 676. In both cases, the courts recognised that where the statute did not oblige the mother to provide the name or even acknowledge the identity of the natural father of the child, the courts cannot impose such a duty on the mother. The Registrar too, cannot in such circumstances enter in the register the name of any person as the father unless and until there is a joint request from both the mother and person acknowledging himself as the father for his name to be so entered. The

position is the same in Ireland – see *In The Matter Of s. 60(8) Of The Civil Registration Act 2004 And In The Matter Of MR And DR (Minors Suing By Their Father And Next Friend OR), OR & CR v. An-tard Chlaraitheoir, Ireland And The Attorney General & Ors* [2014] IESC 60.

[60] Section 10 of the 1953 Act however, has been amended several times in this respect. First, by the Family Law Reform Act 1969 and the Children Act 1975 before finally, the Family Law Reform Act 1987; the last due to recommendations by the Law Commission, Working Paper No. 74, Family Law Illegitimacy (13 March 1979) and its subsequent report, The Law Commission (LAW COM. No. 118) on family law illegitimacy. These amendments, in essence, allowed the inclusion of the biological father's name without a specific request from him (a statutory declaration made by him and tendered by the mother was sufficient); or where there is an affiliation order naming the person as the putative father. The amendments also provided for the re-registration of the birth of an illegitimate child under the same conditions as registration.

[61] The learned SFC also cited to us the decision in *AFE v. Registrar of Births, Deaths and Marriages* [2011] NSWADT 201 where despite the law being amended, the name of the biological father could still not be included as it did not come within the permitted terms for inclusion. In that case, the applicant, born in 1980 but who had been given up for adoption by his natural mother, sought to have the name of his biological father added to his original birth certificate after establishing contact with both his biological parents. His original birth certificate, issued upon adoption, named his adoptive parents as his parents. His biological father was not aware of his application and the applicant indicated that he did not wish to raise this with him "as he did not wish to jeopardise this newly established relationship". His application was supported by the Catholic Care Adoption Services, through whom his adoption had been facilitated.

[62] Despite acknowledging that the applicant's intention to include the name of his biological father on his original birth certificate was because it "forms an important part of his own identity", the application was rejected by the Registrar on the ground that the requirements of s. 18 of the Births, Deaths and Marriages Registration Act 1995 had not been met. Section 18 reads as follows:

> **18 Registration of parentage details**
>
> The Registrar must not include registrable information about the identity of a child's parent in the Register unless:
>
> (a) both parents of the child make a joint application for the inclusion of the information; or
>
> (b) one parent of the child makes an application for the inclusion of the information and the other parent cannot join in the application because he or she is dead or cannot be found, or for some other reason; or

(c) one parent to the child makes an application for the inclusion of the information and the Registrar is satisfied that the other parent does not dispute the correctness of that information; or

(d) a court orders the inclusion of the information in the Register; or

(e) a court makes a finding that a particular person is the parent of the child; or

(f) the Registrar is entitled under the law (including the law of another State or the Commonwealth) to make a presumption as to the identity of the child's parent; or

(g) the regulations authorise the Registrar to include the information.

[63] After examining the above provisions as well as the repealed Births, Deaths and Marriages Registration Act 1973 which was applicable at the time of the applicant's birth, the tribunal set up under the Administrative Decisions Tribunal Act 1997 upheld the Registrar's rejection of the application. The tribunal held that "although the law has changed since that time ... the inclusion of the name of the parents of the child in the Register is not automatic"; that the applicant could not avail himself of the exceptions, whether under the 1995 Act or the 1973 Act. Under the repealed law, the exceptions were: (i) where a joint request to include the name of the father was made by the mother and the person who acknowledges himself to be the father; (ii) at the sole request of the person who acknowledges himself to be the father; and (iii) where "a court of competent jurisdiction has, under the law in force in New South Wales, made or given an order or judgment the making of which is dependent on the court being satisfied that that person is, or which adjudges or declares that person to be, the father of the child".

[64] We can appreciate the decisions above; but with respect, these decisions are of little assistance in view of the fact pattern in our instant appeal. As we have repeatedly reminded, the appellant is not challenging the accuracy of the information recorded as at the time of registration of the birth of the child. That process is governed primarily by the requirements in ss. 7, 13 and 13A. Those provisions deal with matters at the time of registration of the birth; they do not deal with matters post-registration. Neither is the appellant approaching the Registrar-General without any proof of his claim of paternity. There is a valid court order staring at everyone in their face. Surely orders of the court cannot operate in vain and be of no effect. Compliance of such orders in fact offers shelter and protection to those who effect its terms – see s. 14 of the Courts of Judicature Act 1964 (Act 91).

[65] The object and scheme of Act 299 together with the relevant provisions, namely s. 27 read with s. 28 ought to have compelled the Registrar-General to carry out his statutory duties of correction and updating of records. In executing that function, the protection afforded by ss. 13 and 13A to the mother and the putative father of an illegitimate child is unaffected.

[66] What we have here in this appeal is a scenario where the appellant has requested the Registrar-General to update the register following the undisputed DNA results and the order of the High Court declaring the appellant as the biological father of the child; that with this latest information, the record of the identity of the father of the child as "maklumat tidak diperolehi" surely can no longer be maintained but must be updated by way of a correction or amendment.

[67] In our view, that request is fair and proper as the declaratory order of the court is valid and remains effective. With that declaratory order of court, the "maklumat" or information on the identity of the father of the child is now undisputedly available; that the appellant is the biological father of the child. We further understand that the appellant has maintained regular access to the child as was first granted to him by the High Court under the Guardianship of Infants Act 1961 (Act 351). The child is fully aware that the appellant is his biological father.

[68] Given these circumstances, we are of the firm opinion that this new information ought to be reflected in the public record, that is the register, that the true status of the child be corrected to reflect accurate information as regards the biological father, as required by the scheme of Act 299. We cannot see how it may be argued that correcting the register to reflect the declaratory order of the court is not in the interest of the child. On the contrary, it is certainly in the best interest and welfare of the child; consonant with the principles under the Convention on the Rights of the child, to which Malaysia has acceded and ratified to on 11 February 1995.

[69] On a final note, we state that we wholly appreciate and support the need to amend Act 299 to better accommodate and meet the demands of the 21st century, especially to cater for technical and scientific inroads in the field of paternity and genealogy. Other than the United Kingdom and Australia, several other jurisdictions too have made inroads on the matter of rights of fathers of illegitimate children to better accommodate concerns of their rights at the time of registration of births - see for instance s. 17(2) of the Care of Children Act 2004 of New Zealand; ss. 19 and 21 of the Children's Act 38 of 2005 (South Africa); and art. 176 of the New Civil Code of the Philippines. The position in Malaysia on these rights at the time of registration of births are as reflected in ss. 13 and 13A.

[70] However, in respect of the matter that presents in the question of law posed, we cannot be shackled by the law enacted in 1957, derived from a 1953 piece of legislation from the UK which itself has long amended its governing law. We should not read Act 299 so rigidly in the manner as suggested by the respondents, in a matter which has such deep social content, especially when we appreciate the object and scheme of the Act and understand its proper working. This case and its long history through several court proceedings should have been avoided and better solutions found by the keepers of the registers, as early as possible.

[71] The beginning of life, the arrival of a new-born should be celebrated with joy and a sense of well-being. The inclusion of the name of a person as the mother or father of a new-born child does not necessarily mean that such named mother or father is the legitimate or even biological parent of the child, given the advent of assisted or *in vitro* fertilisation and surrogacy (distinguishing further between birth, natural and genetic parents) and without casting any moral judgment, the practice of cohabitation. Had it been properly appreciated at the outset, that the registration of births by the Registrar-General is essentially administrative and facilitative, and not a judicial function (as commented in the Law Commission, Working Paper No. 74), there would have been a prescience to obviate any if not all the obstacles that were presented in this appeal.

Conclusion

[72] We thus answer the question of law posed in the affirmative. We thus allow the appeal and set aside the decision of the Court of Appeal. Further, we make the following order – that the first respondent "Pendaftar Kelahiran dan Kematian, Jabatan Pendaftaran Malaysia, diperintahkan untuk meminda atau membetulkan butir-butir dalam daftar dengan memasukkan nama perayu sebagai bapa kanak-kanak yang dikenali sebagai KANAK-KANAK L, yang dilahirkan oleh responden kedua pada 16 Julai 2015 di Sunway Medical Centre, Subang Jaya, Selangor Darul Ehsan". Lastly, we make no order as to costs.